UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MONTANA

In re **CURTIS D. WILBER,** and **DEBRA S. WILBER**, Debtors.	Case No. **02-30085-7**

MEMORANDUM OF DECISION

At Butte in said District this 4th day of October, 2005.

Pending in this Chapter 7 bankruptcy are: (1) The Trustee's motion for sanctions as amended on May 16, 2005, (Docket No. 158) against the law firm Sullivan, Tabaracci & Rhoades, P.C. (hereinafter "STR") and attorney Donald V. Snavely ("Snavely"); (2) Trustee's objection, filed May 16, 2005, (Docket No. 160) to Snavely's Proofs of Claim Nos. 35 and 38; and (3) Trustee's objection, filed May 16, 2005, (Docket No. 161) to Proofs of Claim Nos. 33, 34 and 37 filed by attorney Quentin Rhoades ("Rhoades") for STR. Snavely and STR filed responses in opposition to the Trustee's motion and objections. After due notice, hearing on these matters was held at Missoula on July 7, 2005. The Trustee Gary S. Deschenes ("Deschenes") appeared represented by attorney Steven M. Johnson. Snavely appeared for himself, and Rhoades appeared for STR at the hearing. Attorney Peter R. Jarvis ("Jarvis"), who was employed by the estate as an expert, testified. Trustee's Exhibits ("Ex.") B, C, D, E, F, G, H, and I, and Snavely's affidavit marked Ex. 2, all were admitted into evidence without objection. In addition, the Court took judicial notice of the Schedules and Statement of Financial

Affairs on file, and the Proofs of Claim in dispute, and certain background facts are derived from the Court's Memorandum of Decision entered on August 19, 2005 ("Docket No. 110"), including Snavely's testimony at the hearing held on August 13, 2003. At the conclusion of the July 7, 2005, hearing the Court allowed Snavely to make a closing argument then took the matters under advisement. After review of the record and applicable law, these contested matters are ready for decision.

This Court has exclusive jurisdiction of this case under 28 U.S.C. § 1334(a). The Trustee's amended motion for sanctions and objections to STR's and Snavely's Proofs of Claim are core proceedings under 28 U.S.C. § 157(b)(2)(A), (B), (C), (K) and (O). For the reasons set forth below, the Trustee's amended motion for sanctions will be denied without prejudice by separate Order, which shall further provide that the Trustee's objections to STR's and Snavely's Proofs of Claim are sustained. Snavely's secured claims set forth in Proofs of Claim Nos. 35 and 38 shall be disallowed, and STR's secured claims set forth in Proofs of Claim Nos. 33, 34 and 37 shall be disallowed and STR will be allowed a claim on the basis of *quantum meruit* in the total amount of $1,500.00 secured by the $75,000 settlement of the estate's claims in Cause No. CV-98-57-M-DWM in the United States District Court for the District of Montana, Missoula Division, which was previously approved by this Court.

FACTS

Curtis D. Wilber and Debra S. Wilber ("Wilbers" or "Debtors") entered into a retainer agreement with STR dated March 13, 1998, providing for STR's representation of Wilbers in a case arising from foreclosure proceedings commenced against Wilbers by Homeside Lending, Inc. ("Homeside") and Shapiro & Meinhold, L.L.P. ("Shapiro & Meinhold"). Ex. B (also

referred to as the "first retainer agreement"). Ex. B provides for a legal fee to STR of 40% of all proceeds obtained by settlement or resolution of the litigation, plus costs. In the event the clients discharged STR it would be entitled to fees and costs incurred to the date of discharge, either on an hourly basis or by *quantum meruit*. Ex. B contemplates that the litigation may be certified as a class action in the future, "and that the fee arrangement may be renegotiated at that time."

STR filed suit in April 1998, against Homeside and the collection firms utilized by Homeside in foreclosures of defaulted loans, in the United States District Court for the District of Montana, Missoula Division, Cause No. CV-98-57-M-DWM (the "Class Action"). Plaintiffs asserted individual and class claims alleging violations of the Fair Debt Collection Practices Act ("FDCPA") FDCPA, Racketeer Influenced and Corrupt Organizations ("RICO") laws, and state law governing unfair or deceptive practices and other claims. Ex. H, pp. 13-14; Ex. 2, p. 1. Snavely became co-counsel in December of 1998, but only on condition that Wilbers agreed to assert their claims only for the benefit of the class members and not otherwise for their personal benefit, and would commit to remain as class representatives until the litigation concluded. Ex. 2, pp. 3-4.

The contemplated renegotiation of the fee arrangement between STR and Wilbers took place in March 1999, but contrary to the provision of Ex. B it took place before the litigation was certified as a class action. Snavely sent the Wilbers a letter and agreement, Ex. C, setting forth the terms of Snavely's and STR's representation as co-counsel of Wilbers "as class plaintiffs" in pursuing claims against Homeside and Shapiro & Meinhold as class representatives. Ex. C explained to Wilbers that they have fiduciary duties as class representatives to the entire class as plaintiffs, and explained Snavely's and STR's duties to the entire class. Ex. C explained that

Wilbers will not be allowed to reap any personal benefit above that of all class members, and that if the class is certified they would not be able to pursue any personal claims for damages except claims which involve the same practices which allowed the case to be certified as a class action. Ex. 2, p. 4.

Snavely and STR, as attorneys for the class, were entitled under Ex. C to a contingent fee of 40% of the gross settlement or judgment proceeds, and reimbursement of advanced costs. The new agreement Ex. C provided Snavely and STR with an attorney lien against all claims as attorneys for the class, and states at pages 3-4 that "in addition to court approval of any settlement being required, you cannot settle your claims or any of the class claims without first paying us the attorney's fees and costs owing to us for representing you and the class in this case." Ex. C, p. 4, also provides: "8. You understand that this agreement only covers our agreement to represent you and the class in this case. It does not cover any other services we may provide to you personally. If you desire our services on another matter, we must agree on a separate compensation arrangement for that matter." Wilbers signed Ex. C on March 10, 1999, and Snavely also signed it, but STR did not[1]. Ex. C, p. 4; Ex. 2, p.7. To date a class has not been certified in the Class Action, but in January of 2000 the district court created a payoff class of 125 parties entitled to repayment of monies which Homeside admitted it improperly charged. Ex. 2, p. 15.

Wilbers filed a voluntary Chapter 13 bankruptcy petition on January 15, 2002, with Schedules and Statements listing assets totaling $558,090.00 and liabilities of $454,118.90.

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[1]In Ex. 2, p. 5, states that Sullivan contacted Snavely about Ex. C, but STR did not sign Ex. C.

Schedule B lists personal property valued at $95,090.00, but no interest in the Class Action is listed on Schedule B. The Statement of Financial Affairs lists at paragraph 4 four (4) suits in Justice Court or Municipal Court in which the Debtors were parties within 1 year preceding the petition date, but does not list the Class Action. Debtors amended their Schedules on April 5, 2002, but did not add their interest in the Class Action to Schedule B or their Statement of Financial Affairs. On April 25, 2002, Debtors amended their Statement of Financial Affairs to disclose a payment made to Washington Mutual, but did not disclose the Class Action at paragraph 4.

Debtors were not able to obtain confirmation of their Chapter 13 Plan in this case. They substituted their original attorney Jon Shields with Dan Morgan[2] on July 16, 2002. On September 9, 2002, Debtors moved to convert the case to Chapter 7, which was granted and the case converted on the same date. On September 24, 2002, and again on December 6, 2002, Debtors amended their Schedules, each time without disclosing their interest in the Class Action.

In the Class Action, on June 14, 2002, the United States Magistrate filed findings and Recommendations in the Class Action. Ex. H, pp. 10-28. On October 4, 2002, the district court entered an order adopting the magistrate's recommendations, denying Wilbers' motion to certify the class, and granting Shapiro & Meinhold's motion for partial summary judgment dismissing plaintiffs FDCPA claims[3]. Ex. H, pp. 6, 11; Ex. I, p. 1. Wilbers filed a motion for leave to file a

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[2]Morgan in turn withdrew as Debtors' attorney in August 2003.

[3]The court concluded the subject loan was not a consumer debt because Wilbers used the loan to purchase a duplex used for investment purposes, not as a personal residence. Ex. H, pp. 5-6. The magistrate concluded that Wilbers could not pursue a claim under the FDCPA or state law allowing recovery for deceptive practices because the transaction was not a consumer debt, and therefore Wilbers were not members of the putative class, lacked standing and were not

motion for reconsideration of the district court's order. Ex. I.

In the bankruptcy case the then-Trustee Richard J. Samson filed a No-Asset Report on October 22, 2002. A Discharge of Debtors was entered on December 10, 2002, and a Final Decree was entered closing the case on December 27, 2002.

Wilbers informed Snavely of the existence of their bankruptcy case in the Spring of 2003, and Snavely consulted with STR who reported the existence of the Class Action to the U.S. Trustee. Ex. 2, p. 10. The U.S. Trustee moved to reopen the case on March 31, 2003, to administer assets which the Debtors had failed to list. The Court granted the U.S. Trustee's motion and reopened the case. Deschenes was appointed Chapter 7 Trustee. On May 28, 2003, Morgan filed for Debtors a motion to amend Schedules and Statements to list the Class Action as an asset, and added STR's attorney Zane K. Sullivan ("Sullivan") as well as Snavely as secured creditors. The Class Action was listed on Schedule B at an unknown value, as were Snavely's and Sullivan's claims which were secured by an attorney's lien on the Class Action. The Statement of Financial Affairs was amended at paragraph 4 to add the Class Action.

On July 7, 2003, Rhoades for Debtors filed a motion to compel abandonment by the estate of the Class Action as burdensome or of inconsequential value and benefit to the estate based on the Debtors' low amount actual damages and penalty ($1,100 total) and STR's and Snavely's attorney's liens ($102,000 for Snavely and over $50,000 for STR) which exceeded the proposed settlement offer of $75,000. At page 3 of Debtors' motion Rhoades wrote: "[A]lthough the complaint alleges both individual and class claims by the Wilbers, *it was understood from the beginning that the case would not be prosecuted if the class claims were not*

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adequate class members under Fed. R. Civ. P. 23. Ex. H, pp. 26-27.

certified." Debtors' motion Docket No. 100, p. 3, Lines 4-6 (Emphasis added.).

The Trustee filed an application to employ Deschenes as attorney for the Trustee, and filed an objection to Debtors' motion to compel abandonment. After a hearing at which Snavely testified, the Court entered a Memorandum of Decision[4] and separate Order denying Debtors' motion to compel abandonment, finding that Debtors failed to satisfy their burden under 11 U.S.C. § 554(b) of proving that the Class Action lawsuit was burdensome or of inconsequential value or benefit to the estate.

In the Class Action, the Trustee rejected the retainer agreements with STR and Snavely in the Class Action. Ex. G, p. 3; Ex. I, pp. 3-8.

Rhoades filed Proof of Claim No. 33 for the STR firm in this case on August 13, 2003, asserting a claim in the amount of $71,164.84 secured by "Other" collateral of "unknown" value dated as of March 16, 1998, with the basis for claim described as "Attorney Fees and Costs". On the same date Rhoades filed an amended Proof of Claim No. 34 for attorney fees and costs from 3/16/98 to 1/10/02 in the amount of $69,333.22, secured by "Other" collateral with a value stated of $0.00. Attached to Proof of Claim No. 34 is a 38-page billing statement of STR's legal services dated from March 17, 1998, through October 22, 2002, listing fees in the amount of $69,324.80 and costs of $8.42.

On August 14, 2003, Snavely filed Proof of Claim No. 35 listing a secured claim in the amount of $121,500 for unpaid compensation for services performed as of the petition date, from December 1, 1998 through November 16, 2001, secured by a cause of action of "unknown" value. Snavely attached a billing statement which lists services for periods ranging from half a

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[4]Docket No. 110.

month to 10 months, and from 61.5 hours to 810 hours per entry.

Snavely filed in the Class Action case a brief in opposition to defendants' motion to dismiss dated September 12, 2003, and a motion for leave to amend the complaint to request emotional distress damages. Ex. E. In Ex. E at pages 2-3 Snavely states that Wilbers' individual out of pocket losses, emotional distress damages, punitive damages and legal fees could result in a potential verdict that "could clearly run into several hundred thousand dollars, far exceeding the $75,000 Offer of Judgment". Snavely noted in Ex. E that the district court had denied class certification, but without prejudice to plaintiffs' right to file a renewed motion to certify the Class Action. Ex. E, pp. 12-13.

On February 20, 2004, Snavely filed in the Class Action a brief in opposition to Deschenes' motion to substitute himself as real party in interest in the Class Action and a motion to stay ruling on said motion. Ex. F. In Ex. F Snavely argued that the Wilbers' written agreement with class counsel abandoned their individual claims for their personal benefit and agreed to prosecute their claims for the benefit of the class, and therefore the Trustee had no role except as a putative class member. In Ex. G, another brief by Snavely in opposition to the Trustee's motion to substitute as real party in interest dated February 20, 2004, Snavely noted that plaintiffs retain the right to appeal the court's denial of class certification, and argues that an express trust was created for the benefit of the putative class members. Ex. G, p. 5.

Rhoades submitted an affidavit of Debra S. Wilber dated February 2, 2004, "to clarify our understanding of what our interest and role was and is in the Class Action". Ex. D. Debra explained in Ex. D that the Wilbers agreed that they could not obtain any individual benefit from the Class Action in which the class members did not share proportionately, because they

recognized that the fees and costs of the litigation would exceed the value of their individual claims, and they wanted to proceed nevertheless in order to stop Homeside's conduct. Debra recognized the Trustee's claim to whatever rights the Debtors had at the time they filed their bankruptcy petition, but she stated she wants to retain rights earned after the bankruptcy was filed, including her right to be compensated for their time spent as class representatives after the case was filed, and to allocate to other class members an appropriate portion of Wilbers' responsibility for attorneys fees and costs in the class actions. Debra concludes in her affidavit:

> 5. We are opposed to settling our individual claims in the Class Action for the sum of $75,000, as proposed by the bankruptcy trustee and the defendants in the Class Action, to the extent that would in any manner jeopardize our ability to continue pursuing the rights of the class members in the Class Action, including appealing the Order denying certification of the Class Action. We are also opposed to any settlement which would in any manner jeopardize any of the claims of the class members in the Class Action and leave them with nothing. We believe that these efforts of the bankruptcy trustee, including agreeing to any settlement which only benefited [sic] our creditors and the bankruptcy trustee and not any of the other class members, would be in direct violation of our obligations under the retainer agreement and directly contrary to the agreement and understanding we had from the very beginning of the Class Action.

Ex. D, pp. 5-6.

In the Class Action the U.S. Magistrate entered additional Findings and Recommendations in the Class Action on April 1, 2004. Ex. I, pp. 10-15. On June 16, 2004, an order was filed in the district court in the Class Action, Ex. I, pp. 1-9, wherein the court adopted the magistrate's recommendations, denied Wilbers' motion for reconsideration of the order denying class certification, and granted Deschenes' motion to substitute himself as real party in interest. The district court denied reconsideration of its denial of class certification because the Ninth Circuit case of *Slenk v. Transworld Systems, Inc.*, 236 F.3d 1072 (9th Cir. 2001) continued

to apply in limiting FDCPA claims to consumer debts and not business loans. Ex. I, pp. 3, 9. The court rejected Wilbers' argument that the retainer agreement created a trust under Montana law, and found Ex. C a simple contract "of a fundamentally different character from a trust creation document." Ex. I, pp. 4-5. The court found that the Trustee was free after rejection of the retainer agreement to dispose of the Wilbers' individual claims for the benefit of the estate. Ex. I, p. 8. Notwithstanding the district court's denial of reconsideration of its denial of class certification, Snavely's affidavit asserts that the order is not final until entry of final judgment, and that the class members have the right to appeal the final judgment and thereby appeal the order denying class certification. Ex. 2, p. 13.

The Trustee negotiated a settlement with Homeside and the other Class Action defendants and filed in the instant case a motion for approval of settlement on February 21, 2005, asking for approval of a settlement and general release in return for payment of a total of $75,000. Docket No. 138. The "Settlement Agreement and General Release" between the Trustee and Class Action defendants[5] is attached to Docket No. 138. Wilbers as class representatives filed an objection on March 2, 2005, and set the matter for hearing on April 7, 2005.

In Wilbers' objection Rhoades repeated the same trust argument which was rejected by the district court, and in addition argued that Deschenes cannot accept the benefits of the retainer agreement while refusing to perform his obligations as class representative under the retainer agreement, and that Deschenes is bound by fiduciary duties to class members and has an inherent conflict of interest which prevents him from settling the Debtors' claims. Wilbers' changed their

[5]Washington Mutual Bank, FA, signed the settlement and release as successor in interest to Homeside.

opposition to the settlement at a meeting with Snavely, Sullivan and Rhoades held on March 31, 2005, at which Wilbers announced they wanted to abandon their role as class representatives, have the proposed settlement approved, and use the monies to pay their creditors. Ex. 2, p. 8. Snavely's response to Debtors change of their position was:

> I explained to the Wilbers that this was in direct violation of the retainer agreement, and that we would oppose any effort to use any money from the settlement of the Class Action to benefit them alone. I also explained that we would protect our rights to be compensated for our efforts, which ultimately would conflict with their ability to pay off their creditors, and that our professional relationship was thus at an end. They stated that they understood and that everybody would have to do what was necessary to protect their own interests. This meeting ended our representation of the Wilbers as class representatives.

Ex. 2, p. 8, paragraph 12.

Deschenes filed an application to employ Jarvis as expert witness on March 29, 2005, which was granted by Order entered March 30, 2005. On April 1, 2005, Rhoades filed on behalf of Wilbers a "Notice of Resignation of Class Representatives and Abandonment of Objection to Trustee's Motion for Approval of Settlement" wherein Wilbers gave notice of their resignation and abandonment of their capacity as class plaintiffs and class representatives in the Class Action, and abandoned their objection to the Trustee's motion for approval of settlement, but only individually and not for the putative class.

On April 5, 2005, Rhoades filed STR's Proof of Claim No. 37 listing a secured claim in the sum of $30,000, calculated as a forty percent (40%) contingency of the $75,000 settlement amount and secured by an attorney's lien pursuant to Mont. Code Ann. § 37-61-420. Snavely filed a similar Proof of Claim No. 38 on April 8, 2005, amending his claim dated August 14, 2003, to reflect the same secured claim of $30,000 as STR's Claim No. 37, based on the same

40% contingency fee of the $75,000 settlement negotiated by the Trustee. After hearing on April 7, 2005, at which Rhoades and Snavely appeared, and Rhoades confirmed on the record that the Wilbers withdrew their objection, the Court entered an Order on April 8, 2005, granting the Trustee's motion to approve settlement and approving the $75,000 settlement provided in the "Settlement Agreement and General Release" between the Trustee and Class Action defendants.

Jarvis Opinion Testimony.

Peter Jarvis is an attorney and expert in attorney professional responsibility who was retained by the U.S. Trustee to review and assess from the viewpoint of applicable Montana Rules of Professional Conduct and applicable attorney standards of care, and whether STR and Snavely violated such rules and standards of care in their representation of Wilbers in the Class Action. Jarvis was employed by the estate to testify. He is admitted to practice in the States of Oregon, Washington, California and Alaska, but not licensed to practice in Montana although he has testified as an expert on attorney ethics in this Court in another case, and has been admitted twice in Montana on a *pro hac vice* basis. He admitted that he has never been a class action plaintiffs' lawyer.

Jarvis reviewed the retention agreements, Ex. B and C, as well as Montana cases construing conflicts of interest and fees, and Montana State Bar ethics opinions, and discussed the case with assistant U.S. Trustee Neal Jensen in preparation for his testimony. Jarvis testified that the attorney ethical issues involved in the Class action were not complex. Over STR's and Snavely's objection, Jarvis was permitted to give an opinion on whether STR and Snavely violated attorney standards of care and rules of professional conduct.

Jarvis testified that Ex. B and C, the retainer agreements, were "grossly inconsistent" with the rules and standard of care of a reasonably prudent Montana attorney, and presented a serious conflict of interest by taking away their clients' rights to settle claims pre-class certification. Jarvis testified that an attorney is not allowed to take away rights from clients, and not allowed to at all times subjugate a client's claim to a class claim. Ex. C, according to Jarvis, was not an agreement Snavely was entitled to get from his clients under the rules and standard of care. Jarvis denied that Ex. C created an express trust.

In addition Jarvis testified that, post-denial of class certification, the regular rule that the client chooses whether to settle[6] applied and that STR's and Snavely's advice to Wilbers that their decision to withdraw their opposition to the Trustee's motion to settle their individual claims constituted a violation of their fiduciary duties to the class to continue the litigation (which Jarvis asserted were duties which Wilbers did not have post-denial), was false advice, not consistent with Wilbers' wishes, and was a breach of their attorneys' duty of undivided loyalty and conflict of interest. Jarvis testified that the legal advice given to Wilbers, post-denial of class certification, that they had a legal obligation to the putative class members to appeal was wrong and demonstrated STR's and Snavely's conflict of interest. Jarvis testified that class counsel could not ethically force Wilbers to appeal denial of class certification, and that the settlement of Wilbers' individual claims post-denial would not have prevented appeal of the denial of certification by other putative class members.

Jarvis testified that Ex. C was not an effective waiver of STR's and Snavely's conflict of

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[6]Jarvis cited a Montana Ethics Opinion identified by number "85-1203" as an example of Montana authority that an attorney must abide by the client's decision whether to settle a claim.

interest because the conflict was not disclosed, was too extreme to be cured by a waiver, and because Ex. C failed to inform Wilbers what happens if class certification is denied and failed to disclose their attorneys' conflict of interest. On cross examination by Snavely, Jarvis explained that Snavely should have disclosed to Wilbers that his desire to take away their decision making authority created a conflict of interest between them, and that reasonably prudent lawyers would have advised their client to proceed differently. Jarvis testified that STR and Snavely failed their duty of "unstinting loyalty" to their clients the Wilbers, and failed their duty of candor to their clients and the Court.

DISCUSSION

I. Contentions of the Parties.

A. Trustee's Motion and Objections to Claims.

Deschenes filed a motion to disqualify STR on March 29, 2005, and filed the pending amended motion on May 16, 2005, (Docket No. 158) for sanctions asking that the Court order STR and Snavely to reimburse the estate for attorney and expert fees incurred by the Trustee in securing the settlement proceeds, and to deny their Proofs of Claim based upon the Court's inherent power to sanction lawyers for improper conduct, local rules and violations of standards of attorney conduct. The Trustee's amended motion alleges misconduct by STR and Snavely in: (a) opposing the settlement of Debtors' individual claims; (b) violating ethical rules governing conflicts of interest to the detriment of Wilbers' interest in settling their individual claims; (c) lack of candor to the court by representing to the Bankruptcy Court that the Debtors' individual claims in the Class Action had minimal value while telling the district court that the claims had a value in excess of six figures; (d) impeding Wilbers' desire to withdraw their opposition to

settlement by advising them that such a withdrawal would violate the retainer agreement, Ex. C.

Separately, but on the same date, May 16, 2005, the Trustee filed objections to Snavely's Proofs of Claim Nos. 35 and 38, and to STR's Proofs of Claim Nos. 33, 34, and 37, asking that their claims be disallowed because they lack merit and under the Court's inherent powers of Sections 34 and 37 of the Restatement (Third) of the Law Governing Lawyers for violation of ethical rules. The Trustee's objection to Snavely's claims contends that the retainer agreement with Snavely, Ex. C, covers only the putative class action and not Wilbers' individual claims which were never expected to be pursued. With respect to STR's claims, the Trustee argues that the original retainer agreement, Ex. B, was superseded by Ex. C.

The Trustee objects that the attorney's lien statute, § 37-61-420, cannot create a lien for Snavely and STR against the Wilbers' individual claims because they did not represent Wilbers except as class representatives and the class was not certified, and Snavely and STR opposed settlement of the individual claims and had a conflict of interest when they told Wilbers that agreeing to the settlement would be a violation of the retainer agreement. The Trustee argues that Snavely and STR are prohibited by the doctrine of judicial estoppel from contending that Wilbers' individual claims had no value without the class action when they previously represented that the individual claims were worth more than six figures. The Trustee argues that the $75,000 settlement was the result of the Trustee's work, and over the strenuous opposition of Snavely and STR which increased the Trustee's expenses. The Trustee argues that Snavely's and STR's fees should be denied under 11 U.S.C. § 329 for ethical violations and because they were not employed by the estate.

B. Snavely's Responses.

Snavely filed responses to the Trustee's motion for sanctions and objections to his claims on June 1 and 2, 2005. Snavely first argues that the Trustee failed to afford him the "safe harbor" provision of F.R.B.P. 9011(c)(1)(A), and that the Trustee's reliance on inherent authority to sanction bad faith is an end run around the safe harbor provision and as such should be rejected. Second, Snavely argues that sanctions can be imposed only for conduct in the instant case before this Court, and not for conduct in the Class Action case. Snavely noted that class counsel filed only 3 substantive sets of papers after the Trustee's involvement in this case, which does not reflect multiplication of proceedings, and withdrew the objection to settlement when Wilbers decided to resign as class representatives. Snavely contends that his actions to prevent the Trustee from using claims belonging to putative class members to pay personal debts of the Wilbers were consistent with Ex. C and Wilbers' fiduciary duties to the putative class members, and evince good faith and aggressive representation to protect the putative class members rather than bad faith.

Snavely argues that Jarvis is not qualified as an expert on Montana standards regarding conflicts of interest, and that only the Court may decide issues of law. Snavely asserts there was no conflict of interest between Wilbers and class counsel because Wilbers voluntarily agreed to forego any personal claims or benefit in Ex. C, and that it was an effective waiver. Snavely denies making any misrepresentations regarding the value of Wilbers' claims, insisting that the Wilbers could receive a few thousand dollars if the Class Action were certified and then settled, and that he did not testify about the value of their individual claims if pursued separately. Snavely ends Docket No. 167 by requesting his attorneys fees and reasonable costs from the

Trustee under Rule 9011(c)(1)(A) for opposing the motion for sanctions[7].

Snavely's response to the Trustee's objection to his Proofs of Claims refers to his affidavit, Ex. 2 wherein he argues that without his and STR's representation of the class in the Class Action there would be no $75,000 settlement of the Wilbers' individual claims because he and STR would not have agreed to prosecute the case for the Class without Ex. C. Ex. 2, pp. 14, 16-17. Snavely argues his contractual rights under Ex. C predated the bankruptcy and were vested and secured by the time the petition was filed. Snavely contends that his attorney's lien is provided by Ex. C, ¶ 7 and § 37-61-420(1), not § 37-61-420(2), and that both Wilbers and the Trustee are bound by Ex. C from receiving anything from a settlement of the claims in the Class Action except *pro rata* as class members. Snavely asserts that Wilbers previously rejected the $75,000 settlement offer ultimately accepted by the Trustee, who they claim continuously attempted to thwart and ignore the retainer agreement. Snavely argues § 329 is inapplicable because his rights were fully vested and secured by the petition date, and that the settlement proceeds are assets of an express trust for the benefit of all the putative class members.

C. STR's Responses.

With respect to the Trustee's motion for sanctions STR argues that the Court should reject expert legal opinion on the Montana rules and standards of professional conduct from Jarvis, an attorney who has never practiced law in Montana. With respect to the alleged conflict of interest, STR notes that it is inherent in class litigation and was cured by the Wilbers' waiver of their right to individual recovery in Ex. C and agreement to share in *pro rata* recovery with

[7]This request is summarily denied. The Trustee's motion for sanctions was not based on Rule 9011.

other class members. STR argues that the Trustee's attempt to settle the Debtors' individual claims violates their retainer agreement and jeopardizes the claims of the putative class by leaving it without a representative in the Class Action.

STR and Snavely each clarify that they jointly rather than separately claim a total of 40% of the settlement, leaving 60% for the estate. STR states that it does not seek a contingency fee based on the 1998 retainer agreement, Ex. B, or seek any fees for post petition services. STR insists that the 1999 retainer agreement, Ex. C, provides that it is entitled to a 40% contingency fee of any settlement. In addition to Ex. C, STR argues that it is entitled to the fee under theories of promissory estoppel based on STR's services provided for a period of years in reliance of the Wilbers' promise, and *quantum meruit* because the Trustee is seeking the benefit of STR's services in the Class Action without paying for them and the estate would be unjustly enriched at the expense of class counsel who pursued the Class Action without compensation for years. STR contends that it did nothing wrong in resisting the Trustee's effort to settle the Debtors' individual claims at the expense of the putative class because that is what the parties bargained for and was required by class counsels', and the class representatives', duty to the class.[8]

II. Trustee's Amended Motion for Sanctions – Inherent Power.

This Court has the inherent authority to sanction willful misconduct, and to deter and provide compensation for a broad range of improper litigation tactics, even in the absence of express statutory authority. *Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178, 1196 (9th Cir. 2003); *Fink v. Gomez*, 239 F.3d 989, 992-93 (9th Cir. 2001); *Caldwell v. Unified Capital Corp.*

[8]STR's response to the Trustee's objections to its claims incorporates by reference its response to the motion for sanctions, and Snavely's responses to both matters.

(In re Rainbow Magazine, Inc.), 77 F.3d 278, 284 (9th Cir. 1996). *In re Deville*, 361 F.3d 539, 545, 550-51 (9th Cir. 2004), the Ninth Circuit rejected appellants' argument that the existence of Rules 11 and 9011 displaced the court's authority to impose sanctions via its inherent power, citing *Chambers v. NASCO*, 501 U.S. 32, 49-50, 111 S.Ct. 2123, 115, L.Ed.2d 27 (1991). Thus Snavely's argument that the Trustee's motion must be construed under Rule 9011 is without merit. The motion is based on the Court's inherent power.

Inherent sanction authority provides a remedy to control, deter and provide compensation for improper litigation tactics arising beyond the violation of a specific order associated with civil contempt. *Dyer*, 322 F.3d at 1196. To impose sanctions under this remedy, explicit findings of bad faith or willful misconduct must be made by the court. *Dyer*, 322 F.3d at 1196; *In re Brooks-Hamilton*, 329 B.R. 270, 287 (9th Cir. BAP 2005). "In this context, 'willful misconduct' carries a different meaning than the meaning employed in the context of determining whether an individual is entitled to damages under § 362(h) or a contempt judgment under § 105(a) for an automatic stay violation." *Dyer*, 322 F.3d at 1196. A court must find specific intent or other conduct in bad faith or conduct tantamount to bad faith, i.e., something more egregious than mere negligence or recklessness. *Id.*

First, however, due process must be provided giving a party sufficient advance notice of exactly which conduct was alleged to be sanctionable and that the party was charged with bad faith. *In re Deville*, 361 F.3d at 548-49. Upon review of the Trustee's amended motion the Court finds no due process lacking. Notwithstanding, the Court deems the Trustee's amended motion for sanctions an appropriate matter for abstention under 28 U.S.C. § 1334(c)(1) which provides: "Nothing in this section prevents a district court in the interest of justice, or in the

interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11."

The Trustee's motion for sanctions alleges misconduct, violation of applicable ethical rules, Rules of Professional Conduct and attorney standards of care governing conflicts of interest with the client and lack of candor to the Court. The Trustee's motion is supported by Jarvis' expert opinion testimony in addition to Snavely's and Debra Wilber's affidavit, and the parties various pleadings and Ex. B and C. The determination of the weight to be given expert testimony or evidence is a matter within the discretion of this Court as trier of fact. *Fox v. Dannenberg*, 906 F.2d 1253, 1256 (8th Cir. 1990); *Arkwright Mutual Insurance Co. v. Gwinner Oil Inc.*, 125 F.3d 1176, 1183 (8th Cir. 1997); Barry Russell, *Bankruptcy Evidence Manual*, 2000 Ed., § 702.2; 4 Joseph M. McLaughlin, *Weinstein's Federal Evidence* § 702.05[2][a] (2nd ed. 2002). Jarvis' opinion is based on his investigation of the record and Montana ethics opinions and case law. But Jarvis admitted that he is not licensed to practice law in the State of Montana, and that he has never been a plaintiffs' attorney in a class action case like Snavely and STR.

In all matters involving the conduct and disciplining of persons admitted to practice law in the State of Montana, the Montana Supreme Court has declared that it possesses original and exclusive jurisdiction and responsibility and has promulgated Rules for Lawyer Disciplinary Enforcement, an Office of Disciplinary Counsel, and a Commission on Practice. *See Montana Rules for Lawyer Disciplinary Enforcement, preamble*. After review of the Trustee's amended motion for sanctions and responses thereto by STR and Snavely, the evidence in the record, and the above declaration by the Montana Supreme Court, this Court in the interests of comity and respect for state law determines that abstention under § 1334(c)(1) is appropriate with respect to

the Trustee's amended motion for sanctions in order that the matters may be heard and decided within the framework for lawyer disciplinary enforcement adopted by the Montana Supreme Court.

The Trustee's motion for sanctions seeks compensation in the form of attorney's fees and costs caused by STR's and Snavely's alleged conflicts of interest, lack of candor and other offenses of ethical rules and attorney standards of care. Violations of the Rules of Professional Conduct are grounds for discipline under Rule 8A(1) of the Rules for Lawyer Disciplinary Enforcement, and restitution as sought by the Trustee is listed among the forms of discipline and sanctions listed at Rule 9A(6) of the Rules for Lawyer Disciplinary Enforcement. Instead of deciding issues of bad faith or willful improper conduct under the Court's inherent power based upon the opinion testimony of an out-of-state expert on the Montana Rules of Professional Conduct and attorney standards of care, this Court deems it more appropriate to exercise its discretion under § 1334(c)(1) to abstain and allow the Trustee to pursue his claim for sanctions under the Montana Rules for Lawyer Enforcement in accordance with the procedures declared and promulgated by the Montana Supreme Court. Accordingly, the Trustee's amended motion for sanctions will be denied without prejudice based on this Court's abstention, with leave for the Trustee to proceed in the appropriate forum.

III. Trustee's Objections to STR's and Snavely's Claims.

The law on objections and allowance of claims is well settled in the Ninth Circuit and this Court. This Court discussed the applicable law governing the burden of proof for allowance of claims in *In re Eiesland*, 19 Mont. B.R. 194, 208-09 (Bankr. D. Mont. 2001):

> A validly filed proof of claim constitutes *prima facie* evidence of the

claim's validity and amount. F.R.B.P. 3001(f). The Ninth Circuit recently explained the general procedure for allocating burdens of proof and persuasion in determining whether a filed claim is allowable in *Lundell v. Anchor Const. Specialists, Inc.*, 223 F.3d 1035, 1039 (9th Cir. 2000):

> A proof of claim is deemed allowed unless a party in interest objects under 11 U.S.C. § 502(a) and constitutes "*prima facie* evidence of the validity and amount of the claim" pursuant to Bankruptcy Rule 3001(f). See also Fed. R. Bankr.P. 3007. The filing of an objection to a proof of claim "creates a dispute which is a contested matter" within the meaning of Bankruptcy Rule 9014 and must be resolved after notice and opportunity for hearing upon a motion for relief. See Adv. Comm. Notes to Fed. R. Bankr.P. 9014.
>
> Upon objection, the proof of claim provides "some evidence as to its validity and amount" and is "strong enough to carry over a mere formal objection without more." *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir.1991) (quoting 3 L. King, Collier on Bankruptcy § 502.02, at 502-22 (15th ed.1991)); *see also Ashford v. Consolidated Pioneer Mort. (In re Consol. Pioneer Mort.)*, 178 B.R. 222, 226 (9th Cir. BAP 1995), *aff'd*, 91 F.3d 151, 1996 WL 393533 (9th Cir.1996). To defeat the claim, the objector must come forward with sufficient evidence and "show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves." *In re Holm*, 931 F.2d at 623.
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> "If the objector produces sufficient evidence to negate one or more of the sworn facts in the proof of claim, the burden reverts to the claimant to prove the validity of the claim by a preponderance of the evidence." *In re Consol. Pioneer*, 178 B.R. at 226 (quoting *In re Allegheny Int'l, Inc.*, 954 F.2d 167, 173-74 (3d Cir.1992)). The ultimate burden of persuasion remains at all times upon the claimant. *See In re Holm*, 931 F.2d at 623.

See also Knize, 210 B.R. at 778; *Matter of Missionary Baptist Foundation of America*, 818 F.2d 1135, 1143 (5th Cir.1987); *In re Stoecker*, 143 B.R. 879, 883 (N.D.Ill.1992), *aff'd in part, vacated in part*, 5 F.3d 1022 (7th Cir.), *reh'g denied* (1993).

Thus, the Bank's Proof of Claim No. 2 is *prima facie* evidence of the validity and amount of its claim under Rule 3001(f), and the Debtor has the burden of showing sufficient evidence and to "show facts tending to defeat the

> claim by probative force equal to that of the allegations of the proofs of claim themselves." *Lundell*, 223 F.3d at 1039 (quoting *Holm*). This Court finds that Eric, as the objecting party, has not produced sufficient evidence to cause the burden to revert to the Bank to prove the validity and amount of its claim. *Lundell*, 223 F.3d at 1039 (quoting *In re Consol. Pioneer*, 178 B.R. at 226).

The analysis under *Lundell v. Anchor Const. Specialists* was reiterated by the Ninth Circuit in *In re Los Gatos Lodge, Inc.*, 278 F.3d 890, 894 (9th Cir. 2002).

Applying the above analysis in the instant case, the Trustee objects to Snavely's and STR's Proofs of Claims on several grounds, including alleged ethical violations and that they worked against the Trustee's efforts to settle the estate's individual claims while representing Wilbers as class representatives for a class which has not been certified. As discussed above, the Court leaves the Trustee's arguments regarding conflicts of interest and ethical violations for another forum. With respect to the Trustee's objections alleging that Snavely and STR were attorneys for an uncertified class and worked against the Trustee's efforts to settle the estate's individual claims, the Court finds that the Trustee has satisfied his initial burden of proof under *Lundell* to show facts tending to defeat STR's and Snavely's claims by probative force equal to that of the allegations of the proofs of claim themselves. *Lundell,* 223 F.3d at 1039; *In re Eiesland*, 19 Mont. B.R. at 208-09; *In re Holm*, 931 F.2d at 623.

STR admits that its retainer agreement with the Wilbers, Ex. B, was superseded by Ex. C. However, STR is not a signatory to Ex. C. Snavely argues that Ex. C entitles him to a contingency fee awarded against any proceeds from the class action. However, Ex. C is limited by its terms to STR's and Snavely's representation of Wilbers as class representatives. With respect to Wilbers' individual claims Ex. C not only is ambiguous, but specifically forbids Wilbers from settling their individual claims for their personal benefit and not the class as a

whole, and "[i]t does not cover any other services we may provide to you personally". Otherwise Ex. C does not specifically address the contingency when, as ultimately happened here, the class was not certified. Ambiguity in a contract is construed against the drafter, which in the instant case is Snavely and by extension STR. *Hubner v. Cutthroat Communications, Inc.,* 2003 MT 333, ¶ 21, 318 Mont. 421, 429, ¶ 21, 80 P.3d 1256, 1261, ¶ 21; *Kingston v. Ameritrade, Inc.*, 2000 MT 269, ¶ 20, 302 Mont. 90, ¶ 20, 12 P.3d 929, ¶ 20. The ultimate burden thus reverts to the claimants STR and Snavely to prove the validity of their claims for a shared 40% contingency fee from the $75,000 settlement by a preponderance of the evidence. *Lundell,* 223 F.3d at 1039; *Eiesland*, 19 Mont. B.R. at 208-09.

Both Snavely and STR amended their initial Proofs of Claim. Their amended claims now claim a joint share in 40% of the $75,000 settlement amount based upon the provisions of Ex. C and Montana's attorney's lien statute § 37-61-420 which provides:

> Judgment lien for compensation. (1) The compensation of an attorney and counselor for his services is governed by agreement, express or implied, which is not restrained by law.
>
> (2) From the commencement of an action or the service of an answer containing a counterclaim, the attorney who appears for a party has a lien upon his client's cause of action or counterclaim which attaches to a verdict, report, decision, or judgment in his client's favor and the proceeds thereof in whose hands they may come. Such lien cannot be affected by any settlement between the parties before or after judgment.

Snavely contends that § 37-61-420(1) provides him with an attorney's lien by contract, Ex. C, as well as by express trust which binds the Trustee from settling the Debtors' individual claims to the detriment of the class. However the last clause of § 37-61-420(1), "which is not restrained by law" provides this Court with a role, in addition to its role under § 502, in determining allowance

of STR's and Snavely's claims and their secured status under Ex. C and their other theories of promissory estoppel and unjust enrichment.

The district court in the Class Action considered and rejected Snavely's contentions that Ex. C created an express trust or otherwise prevented the Trustee from settling the estate's individual claims. The district court overruled Snavely's and STR's objections to the Trustee's motion to substitute himself in the Class Action as real party in interest to resolve the Wilbers' individual claims for the estate. After Wilbers withdrew their objections, Snavely and STR appeared at hearing in this Court in opposition to the settlement on behalf of the putative class, but offered no new evidence or argument, and the Court approved the Trustee's settlement of Wilbers' individual claims for $75,000.

Because the district court considered and rejected Snavely's and STR's arguments against the settlement based upon the existence of a trust and Ex. 3's prohibition against Wilbers individually benefitting from the Class Action, this Court need not revisit those arguments here, except to note Rhoades' explanation in Debtors' motion Docket No. 100, p. 3, Lines 4-6: "[A]lthough the complaint alleges both individual and class claims by the Wilbers, *it was understood from the beginning that the case would not be prosecuted if the class claims were not certified.*" (Emphasis added.). This language clarifies that STR and Snavely's agreement in Ex. C did not contemplate prosecution of Wilbers' individual claims by themselves, for the reason that they were not cost effective to pursue, and therefore the $75,000 settlement of the estate's individual claims achieved by the Trustee in the Class Action were not contemplated in Ex. C to be the subject of STR's and Snavely's attorney's liens under § 37-61-420(1) or (2).

Snavely and STR strenuously argue that the Trustee and Wilbers are constrained by their

fiduciary capacity as class representatives and under Ex. C from profiting personally at the expense of the putative class members. That argument, however, cuts both ways as STR and Snavely are bound by their duty, as putative class counsel to the entire class, from profiting personally from the Wilbers' individual claims, which Rhoades admits were not to be individually pursued under Ex. B or C except as part of the class claims. Ex. C, paragraph 5, provides "we will be entitled to a portion of any settlement or judgment proceeds", but that clause is preceded by the modifying clause "[a]s attorneys *for the class*." Ex. C, p. 3, paragraph 5. (Emphasis added).

Paragraph 7 of Ex. C prohibits Wilbers from settling their claims without paying Snavely the attorney's fees and costs representing them. However, Wilbers did not settle their individual claims, even though the Trustee did later. The Trustee rejected Ex. C and the role of class representative, and was allowed by the district court to seek settlement of the estate's individual claims notwithstanding Ex. C, a settlement which this Court approved. This Court agrees with and adopts the district court's reasoning permitting the Trustee to reject Ex. C as a simple contract. Ex. I, pp. 3-8.

Because STR's and Snavely's representation of the Wilbers always was intended to be limited to representation of them as class representatives pursuing class claims in the Class Action, the Court rejects STR's promissory estoppel claim because STR's and Snavely's intention was not to pursue or benefit Wilbers' individual claims except for the benefit of the entire class. STR and Snavely continue to insist they may appeal the denial of class certification, and under the terms of Ex. C the class claims remain claims to which their attorneys' liens under § 37-61-420 attach and which they are free to pursue on appeal.

Turning to STR's claim for attorneys' fees under the theory of unjust enrichment and *quantum meruit*, the Court acknowledges that its decision disallowing STR's secured claims is a harsh result for class counsel. STR and Snavely zealously advocated Wilbers' claims in the Class Action over a period of several years without payment from Wilbers, and STR brought the existence of the Class Action to the attention of the U.S. Trustee when it learned of the Debtors' bankruptcy case.

Unjust enrichment requires that a party unjustly enriched at the expense of another must make equitable restitution of either the *quantum meruit* value of the other's labor or materials, or the value of the enhancement to the property, but it is only so much of the enrichment which is unjust that may be awarded. *Storms v. Bergsieker* (1992), 254 Mont. 130, 133-34, 835 P.2d 738, 740-41, citing *Robertus v. Candee* (1983), 205 Mont. 403, 670 P.2d 540. The 38 pages of STR's billing records attached to Proof of Claim No. 34 set forth services and costs in the total amount of $69,333.22, with the vast majority of services without question related to the class claims in the Class Action rather than Wilbers' individual claims. It cannot reasonably be disputed, however, that without STR's preparation and filing of the complaint in the Class Action the Wilbers' individual claims would not have existed for the Trustee to settle for the amount of $75,000. The difficulty lies in establishing the amount of STR's services to be awarded under the theory of unjust enrichment. Although STR is not entitled to its asserted secured claim for fees and costs for services related to the Debtors' individual claims under the reasoning set forth above, it is also prohibited under the terms of its retainer agreements from profiting from the Class Action except through recovery of class claims for the putative class members.

Keeping in mind the *Robertus* holding limiting the amount of enrichment to that which is

unjust, the Court has reviewed STR's billing records from Proof of Claim 34 and found fourteen (14) entries during the time period from March 19, 1998, through April 22, 1998, totaling 40.37 hours and $3,230.30 incurred researching, drafting and filing the Wilbers' complaint in the Class Action. It is not possible to breakdown further from such entries the time and fees related to Wilbers' individual claims in the complaint versus the class claims. In the Court's view it would be unjust to deprive STR any compensation for the amount of time spent preparing and filing the original complaint containing Wilbers' individual claims, which Deschenes ultimately settled for $75,000. From review of the record in the Class Action, retainer agreements and STR's billing statements it is clear that much more than half of STR's services and emphasis was placed on the class claims in the complaint versus the Wilbers' individual claims. In granting STR equitable relief on the theory of unjust enrichment and *quantum merit*, the Court will allow STR an allowed claim for fees in an amount $1,500.00, which is slightly less than half of the amount of services incurred filing the original complaint, and said $1,500 will be secured by the $75,000 settlement.

Snavely cannot share under STR's theory of unjust enrichment. First, because Snavely's billing entries attached to Proof of Claim 35 are lumped together for periods spanning several weeks and several different kinds of tasks all exceeding one hour, for which this Court denies compensation under Mont. Local Bankruptcy Rule 2016-1(a) for lumping. More importantly, however, Snavely was brought in and his services were concentrated entirely on the class claims aspect of the Class Action, and not on Wilbers' individual claims except as they related to the class claims. By the time of Snavely's first entries dated November 30, 1998, the complaint containing Wilbers' individual claims had been prepared and filed and the Class Action was

underway. The Court deems none of the $75,000 enrichment to the estate from the settlement unjust with respect to Snavely, and he is not allowed any claim on the basis of *quantum meruit.*

CONCLUSIONS OF LAW

1. This Court has exclusive jurisdiction of this case under 28 U.S.C. § 1334(a).

2. The Trustee's motion for sanctions and objections to STR's and Snavely's claims are core proceedings under 28 U.S.C. § 157(b)(2)(A), (B), (C), (K) and (O).

3. This Court, in the interest of comity with State courts and respect for State law under 28 U.S.C. § 1334(c)(1), abstains from deciding the Trustee's amended motion for sanctions based upon alleged violations of the Montana Rules of Professional Conduct and attorney standards of care. The Trustee's amended motion for sanctions against STR and Snavely based upon this Court's inherent powers will be denied without prejudice, with leave for the Trustee to seek relief in the Commission on Practice of the Supreme Court of the State of Montana pursuant to the Montana Rules for Lawyer Disciplinary Enforcement.

4. The Trustee satisfied his burden of proof under *In re Eiesland*, 19 Mont. B.R. 194, 208-09 (Bankr. D.Mont. 2001) and *Lundell v. Anchor Const. Specialists, Inc.*, 223 F.3d 1035, 1039 (9th Cir. 2000), of showing facts tending to defeat STR's and Snavely's claims by probative force equal to that of the allegations of the proofs of claim themselves, and shifted the ultimate burden of proof to STR and Snavely, who failed their ultimate burden to prove the validity of their claims to share a 40% contingency fee of the $75,000 settlement by a preponderance of the evidence. Snavely's secured claims set forth in Proofs of Claim Nos. 35 and 38 shall be disallowed in their entirety. STR's secured claims set forth in Proofs of Claim Nos. 33, 34 and 37 will be disallowed, but under STR's theory of unjust enrichment and *quantum meruit* STR

will be allowed a secured claim in the total amount of $1,500.00.

IT IS ORDERED a separate Order shall be entered in conformity with the above: (1) abstaining from and denying without prejudice the Trustee's motion for sanctions against Sullivan, Tabaracci & Rhoades, P.C. ("STR") and Donald V. Snavely, as amended filed May 16, 2005 (Docket No. 158); (2) sustaining the Trustee's objection, filed May 16, 2005, (Docket No. 160) to Snavely's Proofs of Claim Nos. 35 and 38 and disallowing those claims; and (3) sustaining the Trustee's objection, filed May 16, 2005, (Docket No. 161) and disallowing Proofs of Claim Nos. 33, 34 and 37 filed by STR, but allowing STR a secured claim in the total amount of $1,500.00 under the theory of unjust enrichment and *quantum meruit*.

BY THE COURT

Ralph B. Kirscher

HON. RALPH B. KIRSCHER
U.S. Bankruptcy Judge
United States Bankruptcy Court
District of Montana